

Fallout of The AT&T VolP Order

Impact on Pure, Facilities-Based VoIP Providers

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AT&T Order Decided On Narrow Grounds

- AT&T's specific service is a telecommunications service
- “AT&T obtains the same circuit-switched interstate access to originate its specific service as obtained by other interexchange carriers...”
- The decision was based in large part, on end-user experience with the service. Specifically, AT&T's end users:
 - obtain only limited voice transmission with no net protocol conversion, rather than information services....;
 - Do not have access to enhanced functionality; and
 - compared to AT&T's traditional circuit-switched long distance service...
 - order the same service
 - pay the same rates
 - place and receive calls using the same 1+ dialing method

PointOne and its Service

- Offers information services that involve computer processing, allows for interaction with customer-supplied information, or interaction with stored information;
- Utilizes a pure IP network that is capable of bridging the IP network to the PSTN;
- Purchases local origination services (PRIs) as an end-user rather than as a carrier;
- Pays surcharges on the services it purchases as an end-user;
- Converts 100% of its voice traffic to IP regardless of the originating or terminating device utilized by the consumer

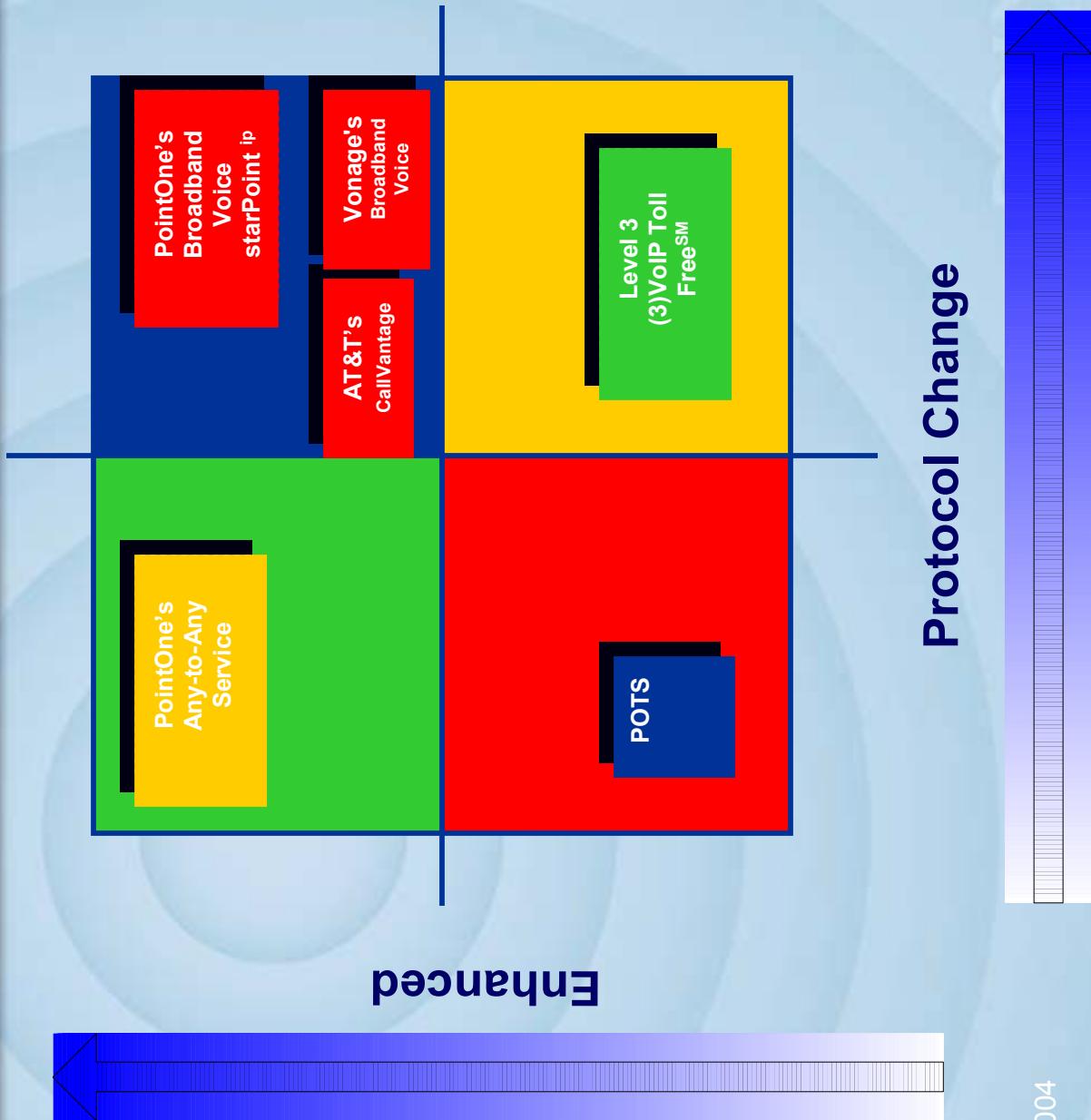
All Traffic Traversing the PointOne Network Has Enhanced Features

- Enables users to access real-time information such as stock quotes or driving directions
- Enables communication through instant messaging applications
- User accesses the desired information by “dialing” a predefined key combination at any point during the communications stream
- PointOne’s services are agnostic with regard to the originating or terminating end user device (e.g. “phone,” computer, PDA, mobile phone, SIP phone, etc.)

PointOne's Services Are Information Services

- PSTN origination and termination does not compel the conclusion that PointOne's services are telecommunications services
- As the Commission explained in the *Cable Modem Order*, the type of facilities used are not determinative of whether a service meets the statutory definitions of telecommunications and information services
 - “Rather, each rests on the function that is made available...” to end users.
 - “ ...the classification flowing from the functions and capabilities offered to end users is sustained “regardless of whether subscribers use all of the functions provided as part of the service...”

Services Matrix



Congress & FCC Created Enhanced - Information Service Distinction

- Computer Inquiries
 - Created distinction between basic and enhanced services
- Telecommunications Act of 1996
 - Congress included definitions of telecommunications and information services
- Non-Accounting Safeguards Order
 - FCC determined that telecommunications service is similar to basic service and information service is similar to enhanced service and that the two are separate and distinct categories

FCC Confirms, Over and Over, That ESPs/ISPs are End Users

- IP-enabled service providers that exchange enhanced traffic with the PSTN are information service providers
- When it adopted Rule 69.5 in 1983, the FCC decided to treat ISPs as end users (MTS and WTS Market Structure Order)
- In 1988, FCC reaffirmed the status of ISPs as end users (ISP Exemption Order)
- In 1991, FCC reaffirmed the status of ISPs as end users (Amendment of Part 69)
- The 1996 Act codifies that ISPs, like their predecessors ESPs, are not telecommunications carriers
- In 1997, FCC reaffirmed the status of ISPs as end users noting that ISPs may pay business line rates by purchasing services from LECs under the same tariffs as end users

FCC Confirms that VOIP Providers, as ISPs, Do Not Pay Access Charges

- Steven's Report
- Computer-to-computer:
 - ISP does not appear to be providing telecommunications to its subscribers
 - Declined to make a definitive pronouncement as to the regulatory status
 - With regard to interstate access charges:
 - “to the extent we conclude that certain forms of phone-to-phone IP telephony service are ‘telecommunications service’ and to the extent the providers of those services obtain the same circuit-switched access as obtained by other interexchange carriers ... we may find it reasonable that they pay similar access charges.”
- Phone-to-phone

Intercarrier Compensation Nprm

- In describing the access charge regime and need for reform, FCC stated:
 - “long-distance calls handled by ISPs using IP telephony are generally exempt from access charges under the enhanced service provider (ESP) exemption.”

Purpose of the AT&T VoIP Order

- “to provide direction to the industry with respect to the application of access charges Pending the outcome of the comprehensive IP-Enabled Services rulemaking proceeding”
- “[t]his decision was explicitly limited to the factual circumstances described by AT&T (from July 7, 2004, Carlisle Testimony Before House Committee on Energy and Commerce)
- “It in no way precludes the Commission from adopting a fundamentally different approach when it resolves the IP services rulemaking, or when it resolves the *Intercarrier Compensation* proceeding

So What's The Problem?

- Local Exchange Carriers are unilaterally determining that Rule 69.5(b) is applicable to PointOne and other enhanced IP-enabled voice providers
- LECS claim that the AT&T VoIP Order eliminates the right of information service providers like PointOne to purchase local PRIs and subjects PointOne to the obligation to pay inter and intrastate access charges for VoIP traffic that terminates on the PSTN
- ISPs/ESPs, like PointOne, must purchase local line-side interconnection from CLECs who have the right to purchase trunk-side interconnection from the ILECs
- ILECs are threatening to block CLEC traffic that originates on a VoIP provider's line if provider does not pay access charges
 - CLECs are beholden to ILECs for network access and will not risk harming that relationship to originate or terminate unaffiliated VoIP traffic
 - CLECs have threatened to eliminate availability of local, flat-rated PRI interconnection for VoIP traffic

The FCC Did Not Change Rule 69.5 in the AT&T VoIP Order

- Instead of “direction” and “certainty,” the AT&T VoIP Order is wreaking havoc on the pure, facilities-based VoIP industry
- FCC prohibited from changing rules in a Declaratory Ruling proceeding
- Under the *WorldCom Order* on ISP bound traffic, FCC does not have authority to “expand” pre-Act access charge obligations to ESPs/ISPs
- Regulatory uncertainty created by AT&T VoIP Order eliminates negotiating leverage of pure VoIP providers
- Ultimately, consumers are harmed because providers must offer services at uneconomic prices; incentives for innovation and deployment are reduced

What Should the Commission Do?

- Provide real clarity and continue to facilitate deployment of economically efficient VoIP services by confirming that
- The text of rule 69.5 precludes imposing access charges on pure, facilities-based VoIP providers
 - Rule 69.5(a) requires ILECs to assess certain charges on “end users.”
 - Rule 69.5(b) requires ILECs to assess “carrier’s carrier” charges upon “all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.”
- The FCC has always treated enhanced VoIP providers as end users, not carriers
- Pure, facilities-based VoIP providers are information service providers entitled to purchase local exchange access services at cost-based, end user rates, unless and until the FCC changes rules 69.5(b)

Conclusion:

Consistent with Commission regulations and precedent, the FCC must confirm that terminating LECS that misinterpret the AT&T VoIP Order are not permitted to engage in customer affecting self-help by blocking enhanced IP traffic or refusing to provide tariffed, cost-based, non-traffic sensitive local termination services to facilities-based, enhanced VoIP providers